

NTSB Order No. EA-4232

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of August, 1994

Docket SE-13136

judge reduced to 120 days the Administrator's proposed 180-day suspension of respondent's airline transport pilot certificate (a reduction the Administrator has not appealed). We grant the appeal in part and reduce the sanction to a 30-day suspension of respondent's certificate.

Respondent was employed by Somerset Aviation Corporation as Director of Operations and, as pertinent to this complaint, was assisting in obtaining certification for the company's Navajo Chieftain so that it might be used in Part 135 commuter operations. On November 10, 1992, respondent flew the aircraft from Keene, NH to Portland, NH, site of the local Flight Standards District Office, so that the aircraft could be checked out by FAA personnel and he could be given a check ride. When he arrived at Portland, respondent and FAA Operations Inspector Radio performed a preflight. Numerous discrepancies were found, including missing placards, a binding aileron, and missing stall (also called flow) strips along the de-icing boots. These discrepancies led to cancellation of the check ride.

Before flying back to Keene, respondent had all discrepancies listed in the complaint fixed, with the exception of the stall strips. After returning to Keene, stall strips were added, and respondent returned to Portland on November 20, 1992, again to attempt certification of the aircraft and a check ride

(..continued)
civil aircraft unless it is in an airworthy condition."
Section 91.13(a) provides that "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

for himself. On that day, Inspector Readio noticed that there was a crack in the nose gear trunnion.

In the complaint, the Administrator charged three flights when the aircraft was allegedly unairworthy: the November 10 flight to Portland; the November 10 flight back to Keene without stall strips; and the November 20 flight to Portland.³ The law judge agreed, but considered the Administrator's proposed suspension too severe, and reduced it from 180 to 120 days. The law judge made no credibility findings, although he commented that respondent had "a very excellent compliance disposition." Tr. at 245.

On appeal, respondent attacks the finding that the lack of flow strips violated the cited regulations. Respondent also argues that the record does not support a finding that the nose gear trunnion was cracked prior to respondent's preflighting of the aircraft and that the law judge's findings, in connection with the cracked nose gear trunnion, would require respondent to have re-inspected the aircraft after any towing.⁴ Respondent

³As a technical matter, there is no real dispute that the cited discrepancies made the aircraft unairworthy, as that term is defined. Administrator v. Copsey, NTSB Order EA-3448 (1991) at 5 (test for airworthiness is not "flyability"; the aircraft must be in conformance with its type certificate and in condition for safe flight). The evidence shows that this aircraft was not in conformance with its type certificate. But see discussion, infra.

⁴Respondent also attacks the law judge's finding that respondent operated the aircraft with a crack in a component of the nose landing gear, but that conclusion is a premise of his argument that the crack must have occurred from the tow prior to the flight.

also argues that the 120-day suspension is excessive under the circumstances. We review these questions in the context of each flight.

1. November 10 Keene to Portland. Respondent's challenges regarding this flight relate entirely to the matter of the stall strips. Respondent does not appeal or discuss the law judge's finding that respondent flew an unairworthy aircraft on this flight because: 1) placards were unreadable or non-existent; 2) tubing attached to the left engine was excessively kinked; 3) a clamp on the left engine induction system was excessively loose; and 4) the left aileron was binding on the lower wing skin. These findings, leaving aside the matter of the stall strips, independently support a finding that the aircraft was not airworthy on this flight. Item 4 is especially problematic.⁵ We address the stall strips below.

2. November 10 Portland to Keene. As noted, respondent had all the items brought to his attention by Inspector Readio, other than the stall strips, repaired before he flew home to Keene. Despite the way he frames his appellate argument, respondent does not contend that stall strips were not required on this aircraft.

Instead, he argues that he should not have been expected to know that stall strips were required when, among other things, the

⁵Respondent does not deny that he knew or should have known about the binding aileron and these other items. Respondent mistakenly argues that the first alleged violation stemmed from his flying the aircraft back to Keene. In fact, we consider his initial flight with a binding aileron to be the most serious incident presented in this proceeding.

record shows that mechanics had inspected the aircraft many times without noticing the absence of stall strips, Mr. Readio did not tell respondent that the absence of the strips made the aircraft unairworthy, and the inspector who had worked with respondent prior to Mr. Readio had also not noticed that stall strips were missing.

Although these factors are not grounds for dismissal of this aspect of the complaint, they do affect the determination of the appropriate sanction. On the one hand, respondent may not avoid his burden of ensuring airworthiness by expecting the FAA to provide him with definitive airworthiness information regarding every discrepancy. Respondent could have asked the company that made the other repairs on November 10 whether stall strips were required. He did not do so. Respondent also could have ensured against this charge by obtaining a ferry permit to fly the aircraft back to Keene without stall strips, a procedure he subsequently followed in connection with the nose gear defect.⁶

On the other hand, there are many other factors that help to explain why respondent acted as he did. Inspector Readio told respondent of his belief that stall strips were required, but was unable to document such a requirement. It had been respondent's experience on a number of occasions, and this testimony is un rebutted, that Mr. Readio's opinions regarding Navajo Chieftain

⁶Admittedly, this would have required consulting with a different FAA inspector. Mr. Readio was an Operations, not an Airworthiness, Inspector. But that consultation might have been productive on the question at hand.

requirements were in error, and his knowledge of the aircraft limited. Respondent therefore was disinclined to rely on his opinion in this instance.⁷ Moreover, as noted earlier, respondent searched operating and maintenance manuals and was unable to find any reference to required stall strips. Reference to them appears only in the aircraft's parts manual.⁸ No prior mechanic or inspector had noted the absence of stall strips, and there was no indication on the aircraft that stall strips had ever been installed. The un rebutted evidence also indicates that respondent, on returning to Keene, further researched this matter and, on learning that stall strips were required, had them installed.

3. November 20 Keene to Portland. The sole charge for this flight is that the aircraft's nose gear trunnion was cracked when it was inspected on landing at Portland. Respondent testified, un rebutted, that he conducted a preflight inspection that included inspecting the nose gear and that no crack was evident.

The aircraft was then towed from the hangar by a certified mechanic (both pulled and pushed, Tr. at 204). Respondent did not re-inspect the nose gear before departing Keene.⁹

⁷See, e.g., Tr. at 209. See also Tr. at 215-216 (Inspector Readio broke door handle due to his lack of knowledge of how to operate it).

⁸It appears that, when new de-icing boots were installed in 1987 and 1988, the required stall strips were not installed on the boots.

⁹Respondent obtained a ferry permit when he returned to Keene with the cracked nose gear. Tr. at 180.

The expert testimony indicates that these cracks are not uncommon and are typically caused from towing, especially pushing with a towbar. Inspector Readio nevertheless testified that respondent had discharged his obligation to conduct a preflight inspection by doing so prior to the towing.¹⁰ Cracks in the nose gear trunnion can be covered by paint and not discernible until they grow larger. Tr. at 138.

We must also take into account the circumstances at the time, and the likelihood that respondent would ignore a crack in the nose gear assembly or perform a careless preflight inspection. Respondent was preparing for his fifth meeting with an FAA Inspector to inspect this aircraft. See Tr. at 124-131 (meetings with Inspector Hubbard took place in August, September, and October). He had made all the repairs Inspectors Hubbard and Readio had sought in their prior meetings, and there is no indication in the record that respondent's compliance disposition was other than good, despite his frustration with the process of dealing with different inspectors with obviously different views of what would be required to bring the aircraft up to certification standards. In our view, the record does not establish, especially in view of Inspector Readio's apparent belief that respondent had no duty to re-inspect, that the

¹⁰Tr. at 81. Inspector Readio apparently believed that the towing had been done by respondent. However, the record on this point is disputed. Respondent testified that a certified mechanic (who assumably would be aware that the nose gear trunnion was susceptible to cracking from towing) performed the towing. Tr. at 173-174.

Administrator has met his burden of proving that the nose gear trunnion was cracked prior to respondent's preflight or that, if it were, respondent knew or should have known of it.

4. Sanction. The law judge reduced the proposed sanction from a 180-day to a 120-day suspension of respondent's airman certificate. In view of our dismissal of the charge related to the November 20 flight and our belief that mitigating factors exist for the November 10 flight, we consider a suspension of 30 days to be appropriate. See, e.g., Administrator v. Nielson, NTSB Order EA-3755 (1992) (30-day suspension for "glaring and noticeable defect" of broken carburetor heat control panel); and Administrator v. Anderson, NTSB Order EA-3976 (1993) (30-day suspension for continuing passenger-carrying DC-9 flight with improperly secured cabin door). Compare Administrator v. Olsen, NTSB Order EA-3743 (1992) (60-day suspension for numerous defects, including avionics equipment removal); and Administrator v. Campbell, NTSB Order EA-3573 (1992) (90-day suspension for continuing passenger-carrying flight without ascertaining damage from deer strike on takeoff). The cases cited by the Administrator to support a 120-day suspension involve circumstances considerably more serious than those before us here. Nor do they reflect a positive compliance disposition such as that demonstrated by respondent, as found by the law judge. Tr. at 245.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted to the extent set forth

in this decision; and

2. The 30-day suspension of respondent's airline transport pilot certificate shall begin 30 days from the date of service of this order.¹¹

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

¹¹For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).